

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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CLERK'S OFFICE

2005 MAR 22 IP 3:40

FIRST, LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

TIMOTHY MCARTHUR,

Defendant.

Civil Action No. 05-10544  
DISTRICT OF MASS.

AFFIDAVIT OF  
IRWIN B. SCHWARTZ  
IN SUPPORT OF  
EX PARTE APPLICATION

05 10544 JLT

Irwin B. Schwartz hereby deposes and states:

1. I am an attorney duly admitted in the Commonwealth of Massachusetts and this Court and a member of the law firm Petrie Schwartz LLP. My firm is counsel to plaintiff FIRST, LLC ("FIRST") in this action.

2. Attached hereto as Exhibit A is a true and correct copy of a posting made by "TmcArthur" on [www.tmcArthur.net](http://www.tmcArthur.net), which is known to be defendant's website.

3. Attached hereto as Exhibit B is a true and correct copy of a posting made by "TmcArthur" on [forum.rscnet.org](http://forum.rscnet.org).

SWORN AND SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY

THIS 22nd DAY OF MARCH, 2005.



Irwin B. Schwartz

3/

**Author**

**TMcArthur**  
Site Admin

Joined: 23 Sep 2004  
Posts: 66  
Location: Bay Area,  
CA

**Message**

Posted: Fri Mar 11, 2005 11:44 pm Post subject:  
TC and GTS physics installers temporarily pulled

**In a good faith effort I am removing the files while talks continue with myself and the attorney representing FIRST-Racing.net. More on this below:**

3/11 - Files in question removed temporarily  
3/14 - Nothing new to report at this time, talks continue  
3/15 - Discussion is in final stage with demands sent to/from both sides  
3/18 - It seems First has stopped responding to discussions (no response from letter sent 3/15)  
3/19 - The TC and GTS physics installers may very well be back online soon if First does not respond

I am actively researching and confirming the following before taking further action:

- 1) **First purchased full rights to the NR2003 product** *(still not confirmed by either First or US Copyright office)*
- 2) **If First has purchased said rights, that they purchased the rights under full knowledge that multiple "exe-mods" were already publicly distributed including the F-330 mod, TC physics, no\_cd.exe's, etc.** *(obvious, but a specific date of the transfer of ownership of NR2003 to First would be much more accurate as to how many mods are included in this and it's very possible the exact reason why First is unwilling to furnish documentation to prove ownership of NR2003)*
- 3) **That because of knowingly purchasing a product already "public domain" that they can not now attempt to enforce "exclusive rights" to the files which have not been "exclusive" for over full year. Thousands of copies of these "exe-mods" have already been in distribution in that time.** *(Confirmed that Intellectual Property and Trade Secret Law are both invalid because of this. verifying if*

*Copyright Law is still valid or not because of this)*

**4) The End-User is allowed to make copies of files on thier computers** *(confirmed by numerous US laws)*

**5) The End-User is allowed to edit/alter/reverse-engineer those files in which they own/license** *(also confirmed by many US laws and court rulings)*

**6) The TC and GTS physics installers are not in violation of any copyright statue as they do not contain any copyrighted information** *(confirmed)*

**7) 1st Amendment Rights allow me to publish the code of "unsecure"** *(there is no encryption of the NR2003.exe file), and previously "public domain" files (NR2003.exe file has been publicly altered for over 1 year now). (Court ruling in the DVD-CCC v. Andrew Bunner, amongst other cases, confirms this)*

I am also contacting [www.eff.org](http://www.eff.org) as well as numerous other government agencies, including the Copyright Offices, to file complaints against First-Raing.net.

If you're not opposite lock, you're not going fast enough!  
<http://www.tmcArthur.net> | [Setup Development Articles](#)

Last edited by TMcArthur on Sat Mar 19, 2005 1:13 am;  
edited 4 times in total

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**Sandeep Banerjee**

Posted: Fri Mar 11, 2005 11:51 pm Post subject:

Joined: 16 Feb 2005  
Posts: 3

Nice going FIRST. This is how you build a great community.

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**TMcArthur**  
Site Admin

Posted: Sat Mar 12, 2005 12:14 am Post subject:

Joined: 23 Sep 2004  
Posts: 66  
Location: Bay Area,  
CA

**Sandeep Banerjee wrote:**

Nice going FIRST. This is how you build a great community.

Nothing is final at this point. I am doing this only as a gesture to promote amicable talks between FIRST and myself. We will see if this makes a difference come Monday.

If you're not opposite lock, you're not going fast enough!  
<http://www.tmcathur.net> | [Setup Development Articles](#)

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**King\_Ford**

Posted: Mon Mar 14, 2005 2:35 pm Post subject:

Joined: 14 Mar 2005  
Posts: 2

Tim, I hope you get things all straightened out with the physics situation. I know that FIRST has already lost a lot of sim racers and they haven't even released a product yet.

Now onto a small question (some may view it as a large question). I am interested in making some physics for my own personal use (never to be distributed) and was wondering if you would be willing to share the knowledge that you have with regard to physics making?

I know that FIRST would probably frown upon this, but at the same time FIRST can't stop you from spreading your knowledge (sorry FIRST you might own source code, but you don't own the 1st Amendment).

If you don't feel comfortable discussing this matter in the forums send me a PM and then hopefully we can get together.

Thank you for your time and I hope your lawyer tells first to stick it where the sun doesn't shine.

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**Jeff Bell**

Posted: Wed Mar 16, 2005 6:25 pm Post subject:

Joined: 14 Mar 2005  
Posts: 2  
Location: Mesquite,  
Texas

That would really blow if they made us stop racing with this mod altogether. I've been reading all the gossip on this issue on just about every sim racing forum and I have always kept to myself, my opinion, when it comes to the politics. When we heard that First had evolved, everyone was happy and ready to switch. Even after all that has happened, i'm still ready to switch. I don't care if its First or rFactor or GTR. I have \$50 burning a hole in my wallet. And i'd gladly mail it to Mr. Henry if I can keep racing the TPTCC mod. It dosen't make a difference to me.

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**Guest**

Posted: Sat Mar 19, 2005 9:52 am Post subject:

Good luck to you Tim. I logged on today to get the TC2 physics so I could turn some laps at Sebring in honor of the big race. Now I see I can't go racing with them for the moment. Will check back later.

JPW

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**TMcArthur**  
Site Admin

Posted: Sat Mar 19, 2005 12:36 pm Post subject:

Joined: 23 Sep 2004  
Posts: 66  
Location: Bay Area,  
CA

**Anonymous wrote:**

Good luck to you Tim. I logged on today to get the TC2 physics so I could turn some laps at Sebring in honor of the big race. Now I see I can't go racing with them for the moment. Will check back later.

JPW

There are other places to find the files. At the moment, I

have removed the files. Ask around, Im sure someone else can get you the files with a simple email to the eGroup.

If you're not opposite lock, you're not going fast enough!  
<http://www.tmcathur.net> | [Setup Development Articles](#)

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**King\_Ford**

Posted: Sat Mar 19, 2005 4:45 pm Post subject:

Joined: 14 Mar 2005  
Posts: 2

Thanks for giving us the update. I am glad that someone is taking a stand against FIRST.

Luke

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**Ellis**  
Guest

Posted: Sat Mar 19, 2005 9:39 pm Post subject:

Just posting to say you have my full support Tim.

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**Guest**

Posted: Sun Mar 20, 2005 8:58 am Post subject:

Way to go Tim!

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**TMan66**  
Guest

Posted: Sun Mar 20, 2005 10:36 am Post subject:

his mods unless a judge says otherwise.

Not that I doubt the eventual outcome, but should all of your efforts and those of others be shot down by a court of law, we all know that an underground movement will evolve and distribute altered .exe's for people to use. Use of the news groups seems to be the most logical direction. And I think First knows this too. I just wonder if they are prepared to constantly monitor news groups and try to shut those down too.

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**Guest**

Posted: Sun Mar 20, 2005 10:39 am Post subject:

Allow me to make one edit to my post above. The colleague of mine intends to release his mods, but would first like to find a proper resolution with First in the spirit of cooperation. But make no mistake, if his efforts and overtures are fruitless/ignored, he will proceed unless a judge says otherwise.

EXHIBIT B

16-Dec-2005, 13:00

View Warnings #508

TMcArthur  
Registered

**RED WARNING**

Join Date: Jun 2004  
Posts: 75  
vCash: 7500

Quote:

Originally Posted by **fzeri**

*To me that was only a quick fix of speed, gears and weight balance done for a game that was about to expire as it was noted n2k3 would be the last of a series so that people could keep playing more a game about to go extinct, nothing more then that. Nothing specialized at all. GPL is still way better then TA in terms of feeling of the car when driving roadies*

I think the point here is that DK \*had\* the capabilities to make a good road-racing physics via the PTA physics but he (they) did not for whatever reason. Then, the modders come out and exceed what was accomplished by the "pros", and in my opinion probably exceeded First's current work. In fact, if the modders do not exceed what the "pros" do then there would be no reason to download the mod. I know my little thingies have been downloaded in the thousands, and my N3 tracks were downloaded in the tens-of-thousands (and still going I might add), and I dont doubt at all that TPTCC and PWF mods were downloaded in the tens-of-thousands or more. The modders, consistantly exceed what the "pros" have done and GTP was one prime example of how far the modding community could push the envelope, suprising even DK.